

Senator Todd D. Weiler proposes the following substitute bill:

DIVORCE AMENDMENTS

2024 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jordan D. Teuscher

Senate Sponsor: Michael K. McKell



LONG TITLE

General Description:

This bill modifies provisions related to alimony determinations.

Highlighted Provisions:

This bill:

- ▶ adds factors to be considered when determining the standard of living that existed during a marriage;
- ▶ requires a look-back period for information provided to demonstrate the financial conditions and needs of a spouse seeking to be awarded alimony;
- ▶ places restrictions on when a court can reduce a showing of need related to alimony;
- ▶ provides means for demonstrating income and the standard of living during a marriage;
- ▶ modifies provisions related to when a court may elect to equalize income between parties by means of an alimony award; and
- ▶ provides potential limitations on imputation of income for alimony purposes in some circumstances where the recipient spouse has no recent full-time work history or has been diagnosed with a disability.

Money Appropriated in this Bill:

None

5th Sub. H.B. 220



26 **Other Special Clauses:**

27 This bill provides a coordination clause.

28 **Utah Code Sections Affected:**

29 AMENDS:

30 **30-3-5**, as last amended by Laws of Utah 2023, Chapters 327, 418

31 ENACTS:

32 **30-3-5.5**, Utah Code Annotated 1953

33 **Utah Code Sections Affected By Coordination Clause:**

34 **30-3-5.5**, Utah Code Annotated 1953

35 **81-1-204**, Utah Code Annotated 1953

36 **81-4-502**, Utah Code Annotated 1953

37 **81-4-503**, Utah Code Annotated 1953

38 **81-4-504**, Utah Code Annotated 1953



40 *Be it enacted by the Legislature of the state of Utah:*

41 Section 1. Section **30-3-5** is amended to read:

42 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
43 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
44 **parent-time -- Alimony -- Nonmeritorious petition for modification.**

45 (1) (a) (i) (A) (I) As used in this section:

46 [~~(a)~~] (Aa) "Cohabit" means to live together, or to reside together on a regular basis, in
47 the same residence and in a relationship of a romantic or sexual nature.

48 [~~(b)~~] (Bb) "Fault" means any of the following wrongful conduct during the marriage
49 that substantially contributed to the breakup of the marriage:

50 [~~(i)~~] (Ii) engaging in sexual relations with an individual other than the party's spouse;

51 [~~(ii)~~] (IIii) knowingly and intentionally causing or attempting to cause physical harm to
52 the other party or a child;

53 [~~(iii)~~] (IIIiii) knowingly and intentionally causing the other party or a child to
54 reasonably fear life-threatening harm; or

55 [~~(iv)~~] (IViv) substantially undermining the financial stability of the other party or the
56 child.

57 [~~(e)~~] (Cc) "Length of the marriage" means, for purposes of alimony, the number of
58 years from the day on which the parties are legally married to the day on which the petition for
59 divorce is filed with the court.

60 (2) When a decree of divorce is rendered, the court may include in the decree of
61 divorce equitable orders relating to the children, property, debts or obligations, and parties.

62 (3) The court shall include the following in every decree of divorce:

63 (a) an order assigning responsibility for the payment of reasonable and necessary
64 medical and dental expenses of a dependent child, including responsibility for health insurance
65 out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

66 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
67 purchase and maintenance of appropriate health, hospital, and dental care insurance for a
68 dependent child; and

69 (ii) a designation of which health, hospital, or dental insurance plan is primary and
70 which health, hospital, or dental insurance plan is secondary in accordance with Section
71 [30-3-5.4](#) that will take effect if at any time a dependent child is covered by both parents' health,
72 hospital, or dental insurance plans;

73 (c) in accordance with Section [15-4-6.5](#):

74 (i) an order specifying which party is responsible for the payment of joint debts,
75 obligations, or liabilities of the parties contracted or incurred during marriage;

76 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
77 the court's division of debts, obligations, or liabilities and regarding the parties' separate,
78 current addresses; and

79 (iii) provisions for the enforcement of these orders;

80 (d) provisions for income withholding in accordance with Title 26B, Chapter 9,
81 Recovery Services and Administration of Child Support; and

82 (e) if either party owns a life insurance policy or an annuity contract, an
83 acknowledgment by the court that the owner:

84 (i) has reviewed and updated, where appropriate, the list of beneficiaries;

85 (ii) has affirmed that those listed as beneficiaries are in fact the intended beneficiaries
86 after the divorce becomes final; and

87 (iii) understands that if no changes are made to the policy or contract, the beneficiaries

88 currently listed will receive any funds paid by the insurance company under the terms of the
89 policy or contract.

90 (4) (a) The court may include, in an order determining child support, an order assigning
91 financial responsibility for all or a portion of child care expenses incurred on behalf of a
92 dependent child, necessitated by the employment or training of the custodial parent.

93 (b) If the court determines that the circumstances are appropriate and that the
94 dependent child would be adequately cared for, the court may include an order allowing the
95 noncustodial parent to provide child care for the dependent child, necessitated by the
96 employment or training of the custodial parent.

97 (5) The court has continuing jurisdiction to make subsequent changes or new orders for
98 the custody of a child and the child's support, maintenance, health, and dental care, and for
99 distribution of the property and obligations for debts as is reasonable and necessary.

100 (6) Child support, custody, visitation, and other matters related to a child born to the
101 parents after entry of the decree of divorce may be added to the decree by modification.

102 (7) (a) In determining parent-time rights of parents and visitation rights of grandparents
103 and other members of the immediate family, the court shall consider the best interest of the
104 child.

105 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
106 court may include in an order establishing a parent-time or visitation schedule a provision,
107 among other things, authorizing any peace officer to enforce a court-ordered parent-time or
108 visitation schedule entered under this chapter.

109 (8) If a petition for modification of child custody or parent-time provisions of a court
110 order is made and denied, the court shall order the petitioner to pay the reasonable attorney fees
111 expended by the prevailing party in that action, if the court determines that the petition was
112 without merit and not asserted or defended against in good faith.

113 (9) If a motion or petition alleges noncompliance with a parent-time order by a parent,
114 or a visitation order by a grandparent or other member of the immediate family where a
115 visitation or parent-time right has been previously granted by the court, the court:

116 (a) may award to the prevailing party:

117 (i) actual attorney fees incurred;

118 (ii) the costs incurred by the prevailing party because of the other party's failure to

119 provide or exercise court-ordered visitation or parent-time, which may include:

120 (A) court costs;

121 (B) child care expenses;

122 (C) transportation expenses actually incurred;

123 (D) lost wages, if ascertainable; or

124 (E) counseling for a child or parent if ordered or approved by the court; or

125 (iii) any other appropriate equitable remedy; and

126 (b) shall award reasonable make-up parent-time to the prevailing party, unless make-up

127 parent-time is not in the best interest of the child.

128 (10) (a) The court shall consider at least the following factors in determining alimony:

129 (i) the standard of living existing during the marriage, which factors shall include the
130 following:

131 (A) income;

132 (B) the approximate value of real and personal property;

133 (C) other benefits; and

134 (D) any other factor that the court determines to be appropriate to enable the court to
135 make a determination of the standard of living existing during the marriage;

136 (ii) the financial condition and needs of the recipient spouse, provided that the court
137 shall permit the recipient spouse to show need by itemizing expenses present during the
138 marriage rather than by itemizing post petition expenses;

139 [~~(i)~~] (iii) the recipient's earning capacity or ability to produce income, including the
140 impact of diminished workplace experience resulting from primarily caring for a child of the
141 payor spouse;

142 [~~(ii)~~] (iv) the ability of the payor spouse to provide support;

143 [~~(iii)~~] (v) the length of the marriage;

144 [~~(iv)~~] (vi) whether the recipient spouse has custody of a minor child requiring support;

145 [~~(v)~~] (vii) whether the recipient spouse worked in a business owned or operated by the
146 payor spouse; and

147 [~~(vi)~~] (viii) whether the recipient spouse directly contributed to any increase in the
148 payor spouse's skill by paying for education received by the payor spouse or enabling the payor
149 spouse to attend school during the marriage.

150 (b) The court may consider the fault of the parties in determining whether to award
151 alimony and the terms of the alimony.

152 (c) The court may, when fault is at issue, close the proceedings and seal the court
153 records.

154 (d) As a general rule, the court should look to the standard of living, existing at the
155 time of separation, in determining alimony in accordance with Subsection (10)(a). However,
156 the court shall consider all relevant facts and equitable principles and may, in the court's
157 discretion, base alimony on the standard of living that existed at the time of trial. In marriages
158 of short duration, when no child has been conceived or born during the marriage, the court may
159 consider the standard of living that existed at the time of the marriage.

160 (e) (i) (A) The court may~~[, under appropriate circumstances,]~~ attempt to equalize the
161 parties' respective standards of living even if the payor spouse has the ability to meet the needs
162 of the recipient spouse.

163 (B) In attempting to equalize the parties' respective standards of living, the court may
164 equalize the incomes of the parties as well as divide property or order the sale of property.

165 (C) If a marriage has been in effect for 10 years or more, and if the recipient spouse has
166 significantly diminished workplace experience resulting from an agreement between the
167 spouses that the recipient spouse reduce their workplace experience to care for a child of the
168 payor spouse, it shall be the rebuttable presumption that the court equalize the parties' standard
169 of living. This presumption can be rebutted by a showing of good cause, and the court shall
170 enter specific findings of fact as to the evidentiary basis for its determination.

171 (ii) Subsection 10(e)(i) may not be applied to or used as the basis to modify an alimony
172 award if the petition for divorce was filed before May 1, 2024.

173 (f) When a marriage of long duration dissolves on the threshold of a major change in
174 the income of one of the spouses due to the collective efforts of both, that change shall be
175 considered in dividing the marital property and in determining the amount of alimony. If one
176 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during
177 the marriage, the court may make a compensating adjustment in dividing the marital property
178 and awarding alimony.

179 (g) In determining alimony when a marriage of short duration dissolves, and no child
180 has been conceived or born during the marriage, the court may consider restoring each party to

181 the condition which existed at the time of the marriage.

182 (11) (a) The court has continuing jurisdiction to make substantive changes and new
183 orders regarding alimony based on a substantial material change in circumstances not expressly
184 stated in the divorce decree or in the findings that the court entered at the time of the divorce
185 decree.

186 (b) A party's retirement is a substantial material change in circumstances that is subject
187 to a petition to modify alimony, unless the divorce decree, or the findings that the court entered
188 at the time of the divorce decree, expressly states otherwise.

189 (c) The court may not modify alimony or issue a new order for alimony to address
190 needs of the recipient that did not exist at the time the decree was entered, unless the court
191 finds extenuating circumstances that justify that action.

192 (d) (i) In determining alimony, the income of any subsequent spouse of the payor may
193 not be considered, except as provided in Subsection (10) or this Subsection (11).

194 (ii) The court may consider the subsequent spouse's financial ability to share living
195 expenses.

196 (iii) The court may consider the income of a subsequent spouse if the court finds that
197 the payor's improper conduct justifies that consideration.

198 (e) (i) Except as provided in Subsection (11)(e)(iii), the court may not order alimony
199 for a period of time longer than the length of the marriage.

200 (ii) If a party is ordered to pay temporary alimony during the pendency of the divorce
201 action, the period of time that the party pays temporary alimony shall be counted towards the
202 period of time for which the party is ordered to pay alimony.

203 (iii) At any time before the termination of alimony, the court may find extenuating
204 circumstances or good cause that justify the payment of alimony for a longer period of time
205 than the length of the marriage.

206 (12) (a) Except as provided in Subsection (12)(b), unless a decree of divorce
207 specifically provides otherwise, any order of the court that a party pay alimony to a former
208 spouse automatically terminates upon the remarriage or death of that former spouse.

209 (b) If the remarriage of the former spouse is annulled and found to be void ab initio,
210 payment of alimony shall resume if the party paying alimony is made a party to the action of
211 annulment and the payor party's rights are determined.

212 (13) If a party establishes that a current spouse cohabits with another individual during
213 the pendency of the divorce action, the court:

214 (a) may not order the party to pay temporary alimony to the current spouse; and

215 (b) shall terminate any order that the party pay temporary alimony to the current
216 spouse.

217 (14) (a) Subject to Subsection (14)(b), the court shall terminate an order that a party
218 pay alimony to a former spouse if the party establishes that, after the order for alimony is
219 issued, the former spouse cohabits with another individual even if the former spouse is not
220 cohabiting with the individual when the party paying alimony files the motion to terminate
221 alimony.

222 (b) A party paying alimony to a former spouse may not seek termination of alimony
223 under Subsection (14)(a), later than one year from the day on which the party knew or should
224 have known that the former spouse has cohabited with another individual.

225 Section 2. Section 30-3-5.5 is enacted to read:

226 **30-3-5.5. Imputed income for recipient spouse for alimony purposes -- No recent**
227 **work history or disability.**

228 (1) Notwithstanding the provisions of Section 30-3-5 or 78B-12-203, the court may, in
229 determining imputation of income to a recipient spouse, apply the provisions of this section if
230 the recipient spouse:

231 (a) has diminished workplace experience, that resulted from an agreement between the
232 spouses that the recipient spouse reduce their workplace experience to care for a child of the
233 payor spouse; or

234 (b) has been diagnosed with a disability that has caused a reduction in the recipient
235 spouse's workplace experience.

236 (2) If a recipient spouse meets the requirements of Subsection (1)(a) or (b), the court:

237 (a) may consider reasonable efforts made by the recipient spouse to improve their
238 employment situation and any reasonable barrier to obtaining or retaining employment;

239 (b) is not required to consider that the recipient spouse may be underemployed if the
240 recipient spouse is employed and has shown reasonable barriers to improving the recipient
241 spouse's employment;

242 (3) (a) In making an income imputation under this section, the court may use relevant

243 provisions of Section 78B-12-203, provided that the provision is not contrary to the
244 requirements of this section.

245 (b) When considering what constitutes a reasonable barrier to obtaining or retaining
246 employment, the court:

247 (i) may include in its analysis a determination of the length of time that is considered
248 by the court to be recent as relates to a recipient spouse's work history, training, or education
249 under this section;

250 (ii) may consider whether the recipient spouse:

251 (A) is fully competitive against other employment applicants whose work history,
252 training, or education is current; and

253 (B) in the case of a disability, is fully competitive against other employment applicants
254 who do not have a disability; and

255 (iii) may impute any income as it relates to employment for which the spouse is fully
256 competitive and has not shown any reasonable barriers to obtain.

257 (c) If the court imputes any income to a recipient spouse who qualifies for income
258 determination under this section, the court shall enter specific findings of fact as to the
259 evidentiary basis for imputing the income.

260 (4) (a) After a divorce decree has been entered, subject to the requirements of
261 Subsection 30-3-5(11), the court may review an income imputation to a recipient spouse under
262 this section.

263 (b) A recipient spouse's showing that barriers have prevented significant improvement
264 of the recipient spouse's employment situation, despite reasonable efforts on the part of the
265 recipient spouse to improve their employment situation, may, in the court's determination,
266 constitute a substantial material change in circumstances and eligibility to review an income
267 imputation under this section.

268 **Section 3. Effective date.**

269 This bill takes effect on May 1, 2024.

270 **Section 4. Coordinating H.B. 220 with S.B. 95**

271 If S.B. 95, Domestic Relations Recodification, and H.B. 220, Divorce Amendments,
272 both pass and become law, the Legislature intends that, on September 1, 2024:

273 (1) Section 81-4-502 enacted in S.B. 95 be amended to read:

274 "81-4-502. Determination of Alimony.

275 (1) For a proceeding under Chapter 4, Dissolution of Marriage, or in a proceeding to
276 modify alimony, the court shall consider at least the following factors in determining alimony:

277 (a) the standard of living existing during the marriage, which factors shall include the
278 following:

279 (i) income;

280 (ii) the approximate value of real and personal property;

281 (iii) other benefits; and

282 (iv) any other factor that the court determines to be appropriate to enable the court to
283 make a determination of the standard of living existing during the marriage;

284 (b) the financial condition and needs of the payee, provided that the payee may show
285 financial needs by itemizing expenses present during the marriage rather than by itemizing post
286 petition expenses;

287 (c) the payee's earning capacity or ability to produce income, including the impact of
288 diminished workplace experience resulting from primarily caring for a minor child of the
289 payor;

290 (d) the ability of the payor to provide support;

291 (e) the length of the marriage;

292 (f) whether the payee has custody of a minor child requiring support;

293 (g) whether the payee worked in a business owned or operated by the payor; and

294 (h) whether the payee directly contributed to any increase in the payor's skill by paying
295 for education received by the payor or enabling the payor to attend school during the marriage.

296 (2) (a) The court may consider the fault of the parties in determining whether to award
297 alimony and the terms of the alimony.

298 (b) The court may, when fault is at issue, close the proceedings and seal the court
299 records.

300 (3) (a) Except as otherwise provided by this section, the court shall consider the
301 standard of living, existing at the time of separation, in determining alimony in accordance
302 with this section.

303 (b) In considering all relevant facts and principles, the court may, in the court's
304 discretion, base alimony on the standard of living that existed at the time of trial.

305 (4) (a) The court may attempt to equalize the parties' respective standards of living
306 even if the payor has the ability to meet the needs of the payee.

307 (b) In attempting to equalize the parties' respective standards of living, the court may
308 equalize the incomes of the parties as well as divide property or order the sale of property.

309 (c) (i) If a marriage has been in effect for 10 years or more, and if the payee has
310 significancy diminished workplace experience resulting from an agreement between the
311 spouses that the payee reduce the payee's workplace experience to care for a minor child of the
312 payor, it shall be the rebuttable presumption that the court equalize the parties' standard of
313 living.

314 (ii) The presumption under Subsection (4)(c)(i) can be rebutted by a showing of good
315 cause, and the court shall enter specific findings of fact as to the evidentiary basis for its
316 determination.

317 (d) This Subsection (4) may not be applied to or used as the basis to modify an alimony
318 award if the petition for divorce was filed before May 1, 2024.

319 (5) (a) If the marriage is short in duration and a minor child has not been conceived or
320 born during the marriage, the court may consider the standard of living that existed at the time
321 of the marriage.

322 (b) In determining alimony when a marriage of short duration dissolves and a minor
323 child has not been conceived or born during the marriage, the court may consider restoring
324 each party to the condition which existed at the time of the marriage.

325 (6) (a) When a marriage of long duration dissolves on the threshold of a major change
326 in the income of one of the parties due to the collective efforts of both parties, the court shall
327 consider the change when dividing the marital property and in determining the amount of
328 alimony.

329 (b) If a party's earning capacity has been greatly enhanced through the efforts of both
330 parties during the marriage, the court may make a compensating adjustment in dividing the
331 marital property and awarding alimony.

332 (7) (a) Except as provided in Subsection (7)(c), the court may not order alimony for a
333 period of time longer than the length of the marriage.

334 (b) If a party is ordered to pay temporary alimony during the pendency of a divorce
335 action, the court shall count the period of time that the party pays temporary alimony towards

336 the period of time for which the party is ordered to pay alimony.

337 (c) At any time before the termination of alimony, the court may find extenuating
338 circumstances or good cause that justify the payment of alimony for a longer period of time
339 than the length of the marriage."

340 (2) Section 30-3-5.5 enacted in H.B. 220 be renumbered to Section 81-4-503 and be
341 amended to read:

342 **"81-4-503. Imputed income for payee for alimony purposes -- No recent work**
343 **history or disability.**

344 (1) Notwithstanding the provisions of Section 81-4-502 or 81-6-203, the court may, in
345 determining imputation of income to a payee, apply the provisions of this section if the payee:

346 (a) has diminished workplace experience, that resulted from an agreement between the
347 spouses that the payee reduce the payee's workplace experience to care for a minor child of the
348 payor; or

349 (b) has been diagnosed with a disability that has caused a reduction in the payee's
350 workplace experience.

351 (2) If a payee meets the requirements of Subsection (1)(a) or (b), the court:

352 (a) may consider reasonable efforts made by the payee to improve the payee's
353 employment situation and any reasonable barrier to obtaining or retaining employment;

354 (b) is not required to consider that the payee may be underemployed if the payee is
355 employed and has shown reasonable barriers to improving the payee's employment.

356 (3)(a) In making an income imputation under this section, the court may use relevant
357 provisions of Section 81-6-203, provided that the provision is not contrary to the requirements
358 of this section.

359 (b) When considering what constitutes a reasonable barrier to obtaining or retaining
360 employment, the court:

361 (i) may include in its analysis a determination of the length of time that is considered by
362 the court to be recent as relates to a payee's work history, training, or education under this
363 section;

364 (ii) may consider whether the payee:

365 (A) is fully competitive against other employment applicants whose work history,
366 training, or education is current; and

367 (B) in the case of a disability, is fully competitive against other employment applicants
368 who do not have a disability; and

369 (iii) may impute any income as it relates to employment for which the spouse is fully
370 competitive and has not shown any reasonable barriers to obtain.

371 (c) If the court imputes any income to a payee who qualifies for income determination
372 under this section, the court shall enter specific findings of fact as to the evidentiary basis for
373 imputing the income.

374 (4)(a) After a divorce decree has been entered, subject to the requirements of Section
375 81-4-504, the court may review an income imputation to a payee under this section.

376 (b) A payee's showing that barriers have prevented significant improvement of the
377 payee's employment situation, despite reasonable efforts on the part of the payee to improve the
378 payee's employment situation, may, in the court's determination, constitute a substantial
379 material change in circumstances and eligibility to review an income imputation under this
380 section."

381 (3) Section 81-4-503 enacted in S.B. 95 be renumbered to Section 81-4-504;

382 (4) Section 81-4-504 enacted in S.B. 95 be renumbered to Section [81-4-505](#); and

383 (5) the reference in Section 81-1-204 in S.B. 95 to "Section 81-4-503" be changed to
384 "Section 81-4-504".